

## **HOST COMMUNITY AGREEMENT**

May 27, 2020

This Host Community Agreement (the "Agreement") is entered into by and between the Town of Needham (the "Town"), a municipal corporation located in Norfolk County, Massachusetts, acting by and through its Select Board, and [The Children's Hospital Corporation, a Massachusetts charitable corporation] having its principal office at 300 Longwood Avenue, Boston, MA 02115 (the "Children's"). This Agreement represents the understanding between the Town and Children's (the "Parties") with respect to the commitments by Children's in connection with the development of the Property (as defined below).

### **BACKGROUND**

Reference is made to the following facts which constitute the background to this Agreement:

A. WHEREAS, a condominium has been created under that certain Master Deed of Center 128 Condominium (the "Condominium") dated July 19, 2012 and recorded with the Norfolk County Registry of Deeds (the "Registry") on August 2, 2012 at Book 30268, Page 511 (together with certain plans of the Condominium recorded with the Registry on August 2, 2012 at Plan Book 616, Pages 11 and 12) (as amended, and hereafter amended from time to time, collectively, the "Master Deed") affecting certain real property described on Exhibit A-1 attached hereto (the "Condominium Land") and depicted on the site plan attached as Exhibit A-2 hereto;

B. WHEREAS, the Condominium Land is located in the New England Business Center Zoning District (the "NEBC");

C. WHEREAS, the Condominium Land is subject to the terms of Major Site Plan Special Permit issued by the Needham Planning Board on October 16, 2012 recorded with the Registry on November 14, 2012 at Book 30675 Page 353, as amended by that certain First Amended and Restated Major Site Plan Special Permit issued by the Needham Planning Board on April 2, 2013 and recorded with the Registry on April 30, 2013 at Book 31283, Page 474, as amended by that certain Major Project Site Plan Special Permit Amendment dated September 17, 2013 and recorded with the Registry on October 7, 2013 at Book 31806, Page 465, as amended by that certain Major Project Site Plan Special Permit Amendment dated January 6, 2015 and recorded with the Registry on January 20, 2015 at Book 32847, Page 371, as further amended by that certain Major Project Site Plan Special Permit Amendment dated April 28, 2015 and recorded with the Registry on May 5, 2015 at Book 33101, Page 234, as further amended by that certain Amendment Decision Major Site Plan Special Permit dated November 10, 2015 and recorded with the Registry on March 8, 2016 at Book 33905, Page 36, and as further amended by that certain Major Project Site Plan Special Permit Amendment dated April 25, 2016 and

recorded with the Registry on April 28, 2016 at Book 34048, Page 590 (collectively, as amended and hereafter amended from time to time, the “Special Permit”);

D. WHEREAS, certain medical related uses are not currently permitted under the NEBC zoning now in effect or under the terms of the Special Permit;

E. WHEREAS, Children’s desires to acquire the rights to develop the portion of the Condominium Land that remain undeveloped under the terms of the Special Permit, which are identified as the Building 1 Site, the Building 2 Site and the Building 4 Site on the plan attached hereto as Exhibit B (each a “Building Site” and, collectively, the “Property”);

F. WHEREAS, pursuant to a citizens’ petition filed pursuant to M.G.L. c. 39, §10, Children’s caused to be placed on the warrant of the Town’s 2020 Annual Town Meeting an article to amend the Town Zoning Bylaw (the “Article”);

G. WHEREAS, the primary purpose of the Article is to allow a “Medical Facility, Pediatric,” (as that term is defined in the Article) as a special permit use in the NEBC;

H. WHEREAS, a favorable vote on the Article by Town Meeting would allow Children’s to seek, from the Planning Board, approval of an amendment to the Special Permit (the “SP Amendment”) to allow for the construction and use of as a Pediatric Medical Facility on the Condominium Land;

I. WHEREAS, notwithstanding the ability to develop each Building Site as a Pediatric Medical Facility after adoption of the proposed zoning amendment, Children’s plans to proceed with the development and use of the Building 1 Site as a Pediatric Medical Facility of approximately 240,000 square feet together with Garage A (as defined in the Special Permit) (the “Project”) as soon as practicable, and represents to the Town that it has no immediate plans to develop the Building 2 Site or Building 4 Site—which are presently vacant—as a Pediatric Medical Facility, or otherwise;

J. WHEREAS, the Parties wish to enter into this Agreement to memorialize their mutual understandings and undertakings with respect to the Project and certain permits to be considered for the Project, as well as other agreements between Children’s and the Town on the terms and conditions hereinafter set forth. The provisions of this Agreement are available for consideration by the Planning Board in reviewing any application for an amendment to the Special Permit authorizing the Project (the “SP Amendment”).

## **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Needham and Children’s hereby agree as follows:

### **Undertakings by Children’s**

1. **Amendment to Special Permit** - Promptly following the Massachusetts Attorney General's approval of the Article, Children's shall submit an application to the Planning Board seeking an SP Amendment authorizing construction and use of the Project (the "Amendment Application"). Upon approval, the SP Amendment shall set forth the terms and conditions governing the development of the Project. Compliance with the terms of this Agreement may be a condition to an approval of the SP Amendment and no changes to such condition may be implemented unless specifically agreed to, in writing, by the Select Board of the Town.

2. **Transportation Demand Management and Sustainable Design** - The Special Permit incorporates conditions, including mitigation requirements, applicable to the development of the Property. Children's will submit the Amendment Application to the Town's Planning Board, which shall include information pertaining to Children's commitments to Transportation Demand Management ("TDM") and sustainable building design measures in connection with the Project. To the extent not already required under the Special Permit Children's shall, in its Amendment Application to the Planning Board, propose to:

- a. Incorporate the following key provisions into the TDM programming it proposes in its Amendment Application: (i) providing transit subsidy to its staff and physicians; (ii) identifying an Employee Transportation Advisor who will coordinate with the 128 Business Council; (iii) providing a shuttle service connecting this campus to the Main Campus in Boston and/or other satellite facilities; (iv) providing dedicated or shared shuttle services between the Project and nearby key public transportation nodes (MBTA Green Line and Commuter Rail); (v) carpool assistance and incentives; (vi) guaranteed ride home provision; (vii) bicycling/walking incentives and amenities; (viii) telecommuting and compressed workweeks, when feasible; (ix) display in the Main Lobby of transportation-related information for employees, patients and visitors; and/or (x) promotional efforts.
- b. Minimize the environmental impact and energy footprint of the Project in the following ways: (i) using LEED as a guideline for the new construction, seeking LEED Silver as a baseline for the work and focusing on energy efficiency; (ii) focusing on an energy efficient building envelope that reduces energy loads by minimizing building heat losses and gains; (iii) focusing on energy efficient mechanical and electrical systems that utilize the energy expended in operating the building in the most effective way possible; (iv) to the extent possible in medical facilities, seeking to minimize the use of fossil fuels and maximize the use of renewable energy; (v) choosing materials that have low embodied energy and carbon in order to minimize greenhouse gas emissions; and (vi) choosing materials that minimize the use of highly fluorinated chemicals, antimicrobials, flame retardants, and vinyl, because those materials have long term environmental impacts.

3. **Community Benefit Payments** – In lieu of personal property tax payments, Children's shall make payments to the Town in support of the Town's youth services, including school-based initiatives.

a. Payment Amounts and Timing —

- i. Within ten (10) business days following issuance of the building permit for the Project (the “First Payment Date”), Children’s shall make a payment to the Town of Two Hundred Thousand Dollars (\$200,000) (the “First Payment”) to support the Town’s youth health initiatives, subject to adjustments, if any, pursuant to Paragraph 3(b) below.
- ii. Within ten (10) business days following the date upon which the architect for the Project has certified that the Project construction is fifty percent (50%) complete (the “Second Payment Date”), Children’s shall make a payment to the Town of Two Hundred Thousand Dollars (\$200,000) (the “Second Payment”) to support the Town’s youth health initiatives, subject to adjustments, if any, pursuant to Paragraph 3(b) below. Prior to issuance of a building permit for the Project, Children’s shall deliver a Project construction schedule to the Town for informational purposes.
- iii. Commencing on July 1 of the fiscal year following the issuance of the final certificate of occupancy for the Project (the “Initial Annual Payment Date”), Children’s shall annually make a payment to the Town of Two Hundred Thousand Dollars (\$200,000) (an “Annual Payment”) to support the Town’s youth health initiatives subject to adjustments, if any, pursuant to Paragraph 3(b) below. Subsequent Annual Payments shall be made on or before the anniversary of the Initial Annual Payment Date (together with the Initial Annual Payment Date, collectively, the “Annual Payment Dates”).
- iv. The First Payment Date, the Second Payment Date, and the Annual Payment Dates shall each be referred to herein as a “Payment Date” and, collectively, as “Payment Dates”. The First Payment, the Second Payment, and each Annual Payment shall each be referred to herein as a “Payment” and, collectively, as “Payments.”

- b. Adjustments — The first Payment amount due to the Town shall be reduced by an amount equal to the sum of all DON Health Funding Payments made by Children’s after the issuance of the SP Amendment and prior to the first Payment Date. To the extent that the aggregate amount of DON Health Funding Payments made by Children’s during that period exceeds the amount set forth in Paragraph 3(a) above, the amount of such exceedence shall be credited against subsequent Payments until such credit is exhausted. Thereafter, each Payment amount due to the Town shall be reduced by an amount equal to the sum of all DON Health Funding Payments made by Children’s during the period commencing on the prior Payment Date and ending on the day before the applicable Payment Date. To the extent that the aggregate amount of DON Health Funding Payments made by Children’s during that period

exceeds the amount set forth in Paragraph 3(a) above, the amount of such exceedence shall be credited against subsequent Payments until such credit is exhausted.

The term “DON Health Funding Payments” shall mean, in connection with Children’s current or future Determination of Need Community Health Funding Obligations, all payments made by Children’s to (i) the Town; or (ii) other non-profit organizations providing services within the Town, but only if such recipient and the purpose and amount of any such payment have been mutually approved by the Select Board and Children’s prior to the submission of any proposal to receive such payments.

4. **Summer Internship** – Children’s currently operates the “COACH” summer internship program, which provides summer employment opportunities for Boston-area high school students. For so long as the COACH internship program is operating, Children’s will consider recommendations from Needham High School regarding applicants who are teens from low-income households or underserved communities.

#### **Undertakings by the Town**

5. The Select Board shall support the adoption of the Article at the Town Meeting, and shall encourage other Town Boards and Departments also to support adoption of the Article. The Select Board shall, to the extent appropriate, cooperate with Children’s and shall encourage other Town Boards and Departments to cooperate with Children’s in issuing local and state permits and approvals required for the Project in a timely and expeditious manner, including, without limitation, the SP Amendment and any other approvals by the Planning Board, Conservation Commission, Department of Public Works or other Town Boards, Commissions and/or Departments. The Select Board shall also support and cooperate in MEPA review and other state permit review of the Project.

6. Without limitation of the foregoing, the Select Board shall, as necessary, grant Children’s such licenses to enter onto Town right of way abutting the Property to perform any mitigation or fulfill any other legal obligation associated with the Project.

#### **Conditions to Agreement**

7. The obligations set forth in Paragraphs 1-4 of this Agreement shall be contingent upon the following:

(a) The adoption by Town Meeting of the Article in the form as it appears in the 2020 Annual Town Meeting Warrant, with any amendments that are approved by Town Meeting, and approval of the Town’s adoption of the Article by the Massachusetts Attorney General’s office, with all challenge periods having passed, no challenges pending or, if such Article or Amendment is challenged, the same having been finally disposed of favorably to the Article or Amendment.

(b) The issuance of the SP Amendment in form and substance reasonably satisfactory to Children's, with all appeal periods having passed, no appeals pending, or if any such SP Amendment is appealed, the same having been finally disposed of favorably to Children's.

(c) The issuance of, in a form and substance satisfactory to Children's, all other state and local approvals applied for and required for the Project, with all appeals periods having passed, no appeals pending, or if any such permit or approval is appealed, the same having been finally disposed of favorably to Children's.

For the purposes of Subparagraphs 7(b) and (c), a permit or other approval issued for the Project shall be conclusively deemed to be reasonably satisfactory to Children's if Children's elects to commence construction of the Project.

8. Notwithstanding the foregoing, it is agreed that the obligations of the Town under Paragraphs 5-6 of this Agreement shall be in effect upon execution of this Agreement.

### **Miscellaneous**

9. The Planning Board may choose to condition its approval of the SP Amendment on compliance with the terms of this Agreement. Children's, for itself and any successors or assigns that hold any interest in the Property, hereby consents and waives any and all objections to the Planning Board's requiring compliance with this Agreement as a condition of the Special Permit (as amended by the SP Amendment), or to any requirement to include this Agreement in the Certificate of Title for the Property (if and to the extent accepted by the registry).

10. All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Kate Fitzpatrick, Town Manager  
Town of Needham  
1471 Highland Avenue  
Needham, MA 02492  
Telephone: (781) 455-7500  
Email: [kfitzpatrick@needhamma.gov](mailto:kfitzpatrick@needhamma.gov)

with a copy to:

J. Raymond Miyares  
Christopher H. Heep  
Miyares and Harrington LLP  
40 Grove Street Suite 190  
Wellesley, MA 02482  
Telephone: (617) 489-1600  
Email: [ray@miyares-harrington.com](mailto:ray@miyares-harrington.com)  
[cheep@miyares-harrington.com](mailto:cheep@miyares-harrington.com)



If to Children's to:

The Children's Hospital Corporation  
c/o Boston Children's Hospital  
300 Longwood Avenue  
Boston, Massachusetts 02115  
Attention: Lisa Hogarty  
Email: [Lisa.Hogarty@childrens.harvard.edu](mailto:Lisa.Hogarty@childrens.harvard.edu)

with copies to:

The Children's Hospital Corporation  
c/o Boston Children's Hospital  
300 Longwood Avenue  
Boston, Massachusetts 02115  
Attention: Office of General Counsel  
Email: [marykaitlin.oconnor@childrens.harvard.edu](mailto:marykaitlin.oconnor@childrens.harvard.edu)

Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, Massachusetts 02110  
Attention: Timothy Sullivan, Esq.  
Telephone: (617) 574-4179  
Email: [tsullivan@goulstonstorrs.com](mailto:tsullivan@goulstonstorrs.com)

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

11. Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until such Party fails to commence to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of such failure from the non-defaulting party and thereafter fails to complete such cure, correction or remedy within sixty (60) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such sixty (60) day period, within such additional period of time as is reasonably required to remedy such default, provided that such Party exercises due diligence in the remedying of such default.

12. This Agreement shall be binding upon the Parties and their successors and assigns, and shall run with the land.

13. Each Party agrees from time to time, upon not less than twenty one (21) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement, in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Project.

14. Whenever the consent or approval of any party is required under this Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned. Such approval shall be deemed given if no written response is received within ten (10) business days of the request for approval having been so delivered; provided, however, that, in the event that the Town Manager or his/her designee provides notice within such ten (10) business day period that additional time is needed for the Town to provide such written response not to exceed twenty (20) additional business days, the requested approval shall not be deemed given if a written response is received as soon as practicable but not later than the expiration of the time specified in such notice.

15. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

16. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Select Board and Children's. The Parties do not intend for any third party to be benefited hereby.

Executed under seal.



IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first set forth above.


**TOWN:**

By its Select Board

  
Maurice Handel, Chair

  
Matthew Borrelli, Vice Chair

  
John A. Bulian

  
Marianne Cooley

  
Daniel P. Matthews

COMMONWEALTH OF MASSACHUSETTS

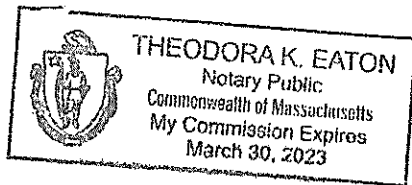
NORFOLK, ss.

On this 29<sup>th</sup> day of May, 2020, before me, the undersigned notary public, personally appeared  
Naumie Handel

and proved to me through satisfactory evidence of identification, which was  
MA driver's license to be the persons whose names are signed on the preceding or  
attached document, and acknowledged to me that they signed it voluntarily for its stated purpose  
as a member of the Select Board of the Town of Needham.

Theodora K. Eaton  
Notary Public:

My Commission Expires: March 30, 2023



**CHILDREN'S:**

THE CHILDREN'S HOSPITAL  
CORPORATION, a Massachusetts  
charitable corporation

By: \_\_\_\_\_  
Name:  
Title:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_ day of May, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_ and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ of the Children's Hospital Corporation.

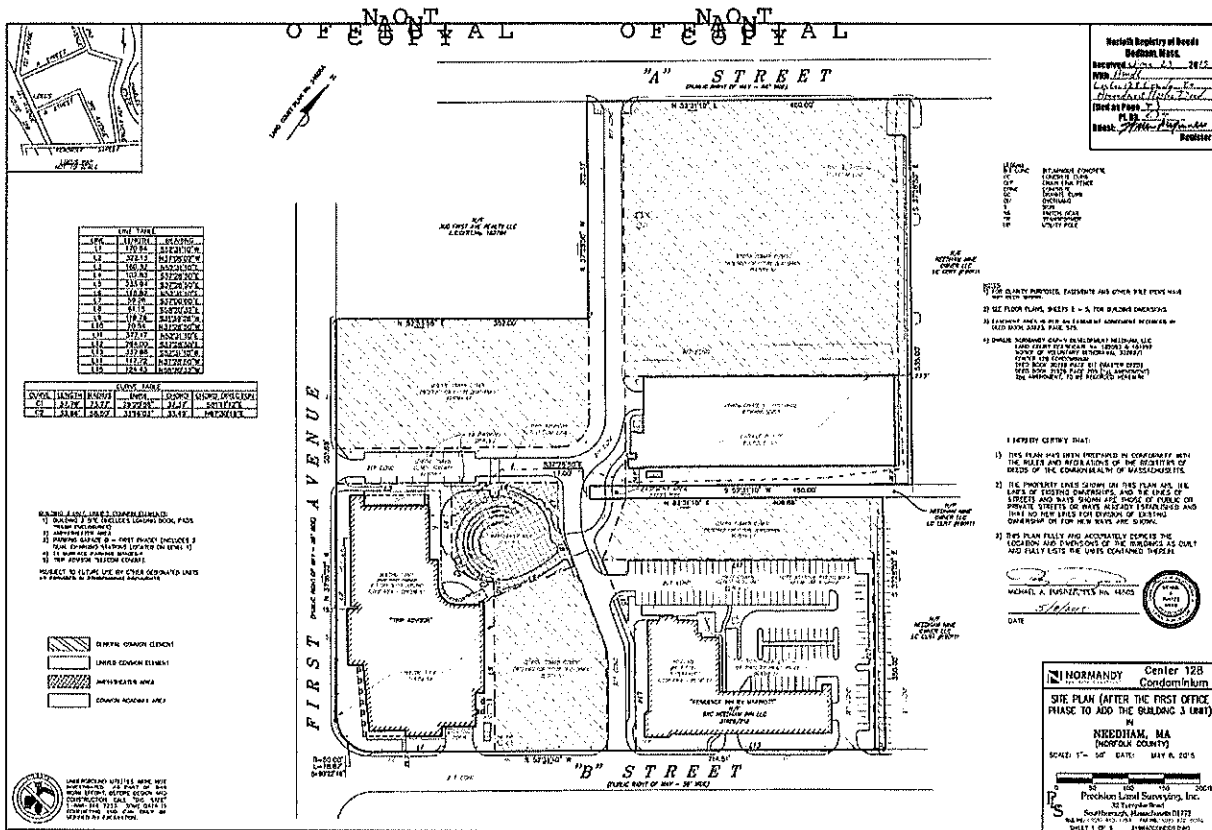
\_\_\_\_\_  
Notary Public:  
My Commission Expires:

## Exhibit A-1

A certain tract of land located on the northeasterly side of First Avenue, southerly side of A Street and northerly side of B Street, Needham, Norfolk County, Commonwealth of Massachusetts, being shown as "Total lot area includes Lots 13, 14, 27, 28, D & E, 596.00 ± S.F. or 13.682 ± Ac." on plan of land entitled "Phase 1 - Master Deed Site Plan of Center 128 Condominium in Needham, MA (Norfolk County)", Scale 1" = 50', prepared by Precision Land Surveying, Inc., 32 Turnpike Road, Southborough, Massachusetts 01772, dated July 2, 2012 and recorded August 2, 2012 in Norfolk County Registry of Deeds Plan Book 616, Plan 12.

Together with the benefit of rights granted in deed dated October 16, 1953 from Gerald W. Blakeley, Jr., et al, Trustees of New England Industrial Center u/d/t dated September 12, 1952 and filed as Document No. 148530, to Kraft Foods Company, said Deed dated October 16, 1953 and recorded in Book 3217, Page 543 and filed as Document No. 158539. (Lot 14)

Exhibit A-2



## Exhibit B

